

Remarks

This amendment is responsive to the official action mailed November 1, 2006, and is accompanied by a Petition for Extension under 37 C.F.R. §1.136(a).

Claims 3-11 as understood and given the broadest reasonable interpretations, were rejected in the official action as anticipated under 35 U.S.C. §102(b) by US 2336402 - Kaiser. Kaiser discloses a shower bath having an array of vertical pipes coupled at their top ends and provided with overhead and lateral shower nozzles. However, there are differences between Kaiser's arrangements and those disclosed by applicant. Therefore, applicant has amended independent claim 11 to more particularly and distinctly define aspects that are novel and render the invention claimed as a whole unobvious over the prior art of record.

Applicant's shower assembly concerns an arch with two spaced sections (pipe legs) extending vertically, and a cross member that connects across the top, with one or more associated nozzles. The assembly is configured to connect to a water supply at the wall of the shower room in a way that does not require the shower room to be demolished and rebuilt, or substantially reconfigured. Applicant's shower assembly as claimed couples to the water supply at a fitting housing for controlling the water supply, which fitting housing provides a point of attachment with the first pipe leg and is located at the operating height of the fitting housing. The water supply serves the flow to the arch, providing water that flows from a direct connection with the fitting housing, up in the first pipe leg, across the cross member and down the opposite pipe leg.

"Controlling" the water supply must be properly construed as varying an aspect of the water supply, such as the pressure/flow rate, temperature or the like. In the cited reference, a connection box under the floor of a shower stall is cited as meeting applicant's claimed fitting housing. Reconsideration is requested in view of the claims as now amended.

It is overbroad to read a junction between conduits as a control. The junction enables water from one conduit to flow into one or more other conduits at the junction,

but this cannot be deemed a control under the broadest reasonable interpretation of the claim language. A junction cannot be varied in any way that might be deemed a control. The claims as amended are not met by the prior art.

The claims as amended preclude the application of the claims to the prior art as in the official action. The claims distinguish by the nature of the claimed fitting housing as a “control,” by the location of the fitting housing, by the direct coupling of the fitting housing to the first pipe leg and other aspects. The prior art does not meet the invention claimed as a whole.

Moreover, the Kaiser prior art patent does not provide any suggestion or motivation that would lead routinely toward revisions of the disclosed plumbing arrangements that might have more in common with applicant’s invention. Although it might have been possible for Kaiser to rearrange various aspects of the disclosed plumbing to provide an arch with a first leg coupled directly to Kaiser’s control element 34, Kaiser did not configure a shower arrangement in such a way, and does not teach or suggest that it would be possible or advantageous to do so.

With the benefit of applicant’s disclosure in hindsight, one can see that several of Kaiser’s flow lines as well as Kaiser’s junction box 2 actually can be dispensed with, while still providing the necessary flows of water. Applicant’s invention is a substantially improved configuration, showing that it was not necessary for Kaiser to run various flow lines within the structural walls. Kaiser did not need to provided a raised slat floor to clear space for a junction box and flow lines. Applicant recognized the advantageous nature of the structures defined in applicant’s claims as a whole. It is plain that the person of ordinary skill as represented by Kaiser did not.

The claims as amended distinguish from Kaiser. The differences are such that the subject matter claimed, as a whole, is not shown to have been obvious.

Independent claim 11 states that the fitting housing controls the supply of water to the shower arrangement. According to the dictionary, to “control” is to exercise a restraining or directing influence over. A “control” is a device or mechanism used to regulate the operation of a machine, apparatus or system. (Merriam Webster’s

Collegiate Dictionary, 11th Ed.). A static conduit such as Kaiser's distribution box 2 cannot properly be regarded as a control. Nothing about the distribution box is subject to change by external influence or leads to changes external to the distribution box. The distribution box cannot be regulated. The distribution box cannot vary the operation of any flow related element or aspect. The distribution box is a static structure and cannot reasonably be deemed a control. Insofar as there is any variation possible in Kaiser, it is controlled elsewhere.

Kaiser has a control, namely the temperature regulation valve 34, which is manually adjustable. Assuming that the control is a fitting housing, it still does not meet the limitations particularly recited in applicant's independent claim 11. The Kaiser temperature regulation valve is not along a pipe leg and does not connect with any part of the arch comprising two spaced pipe legs and a cross member with one or more spray nozzles. Kaiser's valve leads to the under-floor distribution box.

Whereas Kaiser lacks a control as claimed, Kaiser does not anticipate claim 11 as a whole. Claim 11 also has now been amended to further distinguish the invention from Kaiser. Applicant's first pipe leg fitting is recited to extend from the fitting housing. Claim 11 states that the fitting housing is affixed to the wall at an operating height. Claim 11 further states that the fitting housing controls the supply of water to the shower arrangement. These aspects are not disclosed or suggested by Kaiser regardless of whether or not a static distribution box is deemed to be a fitting housing with a control.

Claim 11 recites that the first pipe leg that extends from the fitting housing is coupled to the cross member and the cross member is coupled to the second pipe leg such that water is supplied to the second pipe leg through the cross member. This aspect distinguishes from Kaiser. In Kaiser, all the pipe legs are supplied with water from the under-floor distribution box. Kaiser does not teach or suggest the leg-crossmember-leg arch arrangement fed from a fitting housing at which the flow is operationally controlled (i.e., varied). Kaiser does not meet all the elements claimed.

The amendments to claim 11 particularly and distinctly define those aspects that render the invention patentably different from Kaiser. There is full support in the specification for that limitations added to the claims. At page 4, line 11, the specification

states that the fitting housing is at operating height. This passage refers to operation of the fitting housing to control the supply of water to the shower arrangement, meaning to vary some aspect of the supply of water. Page 4, lines 12, 13 state that the first pipe leg extends out of the fitting housing, thus describing an arrangement wherein the fitting housing is connected directly into the extension of the first pipe leg. Claim 11 as amendment recites that the first pipe leg, which is permanently affixed with respect to the wall and extends upwardly, extends upwardly from the fitting housing parallel to a plane of the wall. The first pipe leg is defined as coupled directly to the fitting housing. The fitting housing is the point from which the first pipe leg extends.

Independent claim 11 thus has been amended to positively recite limitations that are simply not found in the cited prior art Kaiser reference. Although Kaiser is concerned with spraying water onto a user, Kaiser does not teach or suggest the specific structure that applicant has disclosed and claimed. In order to more nearly approach the claimed invention starting with Kaiser, it would be necessary to omit the very element that Kaiser uses to route the water to the plural pipe legs, namely the floor junction box 2. It would also be necessary to re-consider Kaiser's basic idea of supplying water from a source to various shower heads along paths that all lead the flow toward the overhead nozzle. Applicant supplies all the nozzles from the fitting housing in one leg, thereby providing a flow that partly bypasses any overhead nozzle, and runs in a direction that is opposite from the flow that occurs in Kaiser in any analogous second pipe leg. There is no support in Kaiser for considering the possibility of such changes.

Therefore, Kaiser does not disclose the invention particularly and distinctly defined in applicant's claim 11 as amended. The differences are such that there is no prima facie basis to conclude that it would be a routine or obvious matter to redesign the building structures, water flow paths, control arrangement and water routing plumbing elements of Kaiser. There is certainly no basis to suggest that the person of ordinary skill would find it obvious, without the benefit of hindsight, to eliminate the under-floor distribution box 2, to rearrange the connection pipe 31 as an upward flowing first pipe leg that is the leg that is exclusively supplied by direct connection to the fitting housing,

and to cause flow that passes through the overhead cross member to feed the second pipe leg on the opposite side. There is nothing but hindsight to guides all these changes.

The claims as amended define aspects that are not disclosed or suggested by Kaiser. Applicant has amended the claims to obviate the examiner's broad reading of the claim terms, including the term "control." Even if one can argue that the term "control" has no meaning associated with regulation or varying the water flow, the expressly defined location of the fitting housing in claim 11 still prevents one from finding the invention claimed as a whole in the objective teachings of Kaiser.

The differences between the invention defined in claim 11 and the prior art of record are such that the subject matter claimed as a whole is not shown to have been know or obvious. Claims 3-10 depend from claim 11 and are allowable at least due to dependence. The claims as amended are in condition for allowance. Reconsideration and allowance are requested.

Respectfully submitted,

Date: March 30, 2007

/Stephan Gribok/
Stephan P. Gribok, Reg. No. 29,643
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
tel. 215-979-1283
fax.215-979-1020
SPGRIBOK@DUANEMORRIS.COM

Docket No.: D4700-00391
[P 42562 WO/US]